# Just and Reasonable Pole Attachment Rates, Terms and Conditions for ILECs: A Legal and Practical Necessity

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# Overview

- Law compels granting ILECs just and reasonable rates
- Practical perspective on pole attachment agreements
  - Joint ownership
  - Joint use
  - Licensing
- Problems with the current pole attachment landscape

# The Act Compels the FCC to Offer ILECs "Just and Reasonable" Rates

- ILECs are "providers of telecommunications service" and therefore the FCC shall regulate attachment rates charged to ILECs so that "such rates terms and conditions are just and reasonable."
  - § 224(b)(1)
- "The Commission shall prescribe by rule regulations to carry out the provisions of this section."
  - § 224 (b)(2)
- Subsection (b)(2) compels Commission action on this topic
  - Analogous to the Commission's finding that it must remove barriers to broadband deployment under § 706

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# Joint Ownership

- Each company owns part of the pole (50/50, 60/40)
- Companies share costs and maintenance expenses
- Parity is inherent
- No rents exchanged
- No make-ready fees
- Generally limited to large urban areas not served by Frontier

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# Joint Use Agreements

- Each company owned 100% of its poles with mutual right to attach to the other company's poles
- Parity of pole ownership requirement or percentage generally established
- Each party had substantial rights and control over pole placement, replacement and removal of own poles
- Pole owners charged the other company rents
- Maintaining parity was essential to ensure equitable sharing of pole ownership and rents

# Licensing

- One company owns the poles to which the licensee attaches
- No parity of pole ownership percentages established
- Owner controls pole ownership, assignment of pole space, pole placements, replacements and removals
- Make-ready fees reimbursed
- Licensee has few administrative or operational rights or controls

# Joint Use Agreements Have Transformed to the Benefit of the Utilities

- Traditional joint use agreements:
  - Cooperative, efficient resource use with sharing of costs and exchange of reciprocal benefits
  - ILECs use 3’ and Utilities use 3-4’ of space
  - Agreements based on parity of poles owned
  - Little or no rent paid between parties
    - Many agreements contained nominal charges ($1-3) for ownership imbalances
- Transition of joint use agreements:
  - Tech advancements and operational changes mean Utilities use more space (8-10’) and ILECs use less (1-2’)
  - New entrants have led to multiple attachments/pole
  - Utility pole ownership has increased while ILEC has decreased
  - Industry consultants encouraged Utilities to use poles for revenue generation

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# Current State of Joint Use Agreements

- Utilities focus on maximizing revenues
- Per pole rates do not account for Utilities higher percentage of space used
- Joint use agreements have become *de facto* licensing agreements
  - Agreements do not require parity, giving Utilities leverage
  - Utilities collect rents from third parties for space “reserved” for ILECs
  - ILECs pay application, make-ready and engineering fees on Utility poles
  - Utilities do not guarantee that their rights-of-way or easements cover ILEC attachments on Utility poles, it is the ILEC’s responsibility
- Contrary to Utility assertions ILECs cannot uniformly seek relief for unreasonable rates, terms and conditions at the state level

# Current Joint Use Agreements Place Frontier at a Competitive Disadvantage

- For the 20 largest joint use agreements with investor-owned Utilities in the newly-acquired Frontier properties:
  - Frontier is attached to 642,594 poles; Utilities are attached to 137,552 poles
  - Significant disparity in ownership gives Utilities significant leverage to negotiate reasonable rates and terms for their attachments on ILEC poles if the FCC concludes ILECs are entitled to rate protection under § 224(b)
- Examples:
  - North Carolina Utility attempting to unilaterally increase the rental rate from $36.05/pole in 2009 to $64.75/pole in 2010
    - Utility controls 98% of poles in overlapping service territory
  - South Carolina Utility charges Frontier $35.41/pole while CLECs pay $12.19/pole in rural areas and $8.08 in urban areas

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# Rural Broadband Deployment

- Frontier has committed to aggressive rural broadband deployment
- Pole attachments are a necessity for rural broadband deployment
  - Terminating one-sided agreements is not an option
- Rural ILECs often serve areas with more poles per mile than homes and do not have the customer density to recover outrageous pole attachment rates
- National Broadband Plan recognizes that reducing ILEC attachment rates to the cable rate could have a significant increase in rural broadband adoption